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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Approval of the Results of Its 2013 Local Capacity Requirements Request for Offers for the Moorpark Sub-Area.	A.14-11-016 (Filed November 26, 2014)

SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) RESPONSE TO APPLICATIONS FOR REHEARING OF DECISION 16-05-050

(PUBLIC VERSON)

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TABLE OF CONTENTS

TABLE OF CONTENTS (CONTINUED)

SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) RESPONSE TO APPLICATIONS FOR REHEARING OF DECISION 16-05-050

TABLE OF AUTHORITIES

Page

Commission Decisions and Resolutions

Commission Rules of Practice and Procedure

SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) RESPONSE TO APPLICATIONS FOR REHEARING OF DECISION 16-05-050

TABLE OF AUTHORITIES

Page

Statutes

Case Law

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(PUBLIC VERSION)

Pursuant to Rule 16.1(d) of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, Southern California Edison Company ("SCE") hereby responds to the Applications for Rehearing ("AFRs") filed by the Center for Biological Diversity ("CBD"), the City of Oxnard[1] ("Oxnard") and California Environmental Justice Alliance/Sierra Club[2] ("CEJA/Sierra Club") of Decision ("D.") 16-05-050, which approved, in part, contracts from SCE's 2013 Local Capacity Requirement ("LCR") Request for Offers ("RFO") for the Moorpark sub-area. Rule 16.1(d) states that "[i]n instances of multiple applications for rehearing the response may be to all such applications, and may be filed 15 days after the last application for rehearing was filed." SCE is responding to all AFRs in its response. Oxnard filed its AFR on July 1, 2016; SCE is appropriately filing its response on July 18, 2016.

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1 Oxnard's AFR is limited to it joining CEJA/Sierra Club's AFR, with the exception of Section IV.D. Oxnard AFR at 1. Therefore, when SCE references and responds to CEJA/Sierra Club arguments, with the exception of the arguments made in Section IV.D., it is also responding to Oxnard, even if not mentioned.

2 CEJA/Sierra Club and Oxnard "do[] not contest Commission approval of the energy efficiency and renewable projects approved as part of D.16-05-050." CEJA/Sierra Club AFR at 1. CEJA/Sierra Club and Oxnard limit their AFRs to the Commission's approval of the Puente contract and the Commission's consideration of the procurement process that led to Application ("A.") 14-11-016, whereas, CBD's AFR seems to call into question the approval of the entire RFO process and all approved contracts. CBD AFR at 1-4, 22-36.

I.

INTRODUCTION

Rule 16.1(c) of the Commission's Rules of Practice and Procedure provides, "[t]he purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously." SCE respectfully requests that the Commission deny the parties' AFRs because they fail to identify any legal error in D.16-05-050.

As prescribed by Rule 16.1, an application for rehearing must identify a "legal error;" it is not sufficient to reiterate evidentiary or policy arguments made throughout the proceeding.[3] "The fact that there is disagreement or contrary evidence on a holding does not indicate any legal error in the Decision."[4] Furthermore, as stated by the Commission in D.14-12-086, "the Commission is not required to address every single issue presented by a party" in a proceeding.[5]

The parties may not be satisfied with D.16-05-050 and its findings and conclusions, but the Commission has the discretion to arrive at its findings in the manner of its own discretion[6] and may weigh evidence and reach a determination using its judgment.[7] Moreover, "[t]here is a strong presumption favoring the validity of a Commission decision."[8] The standard for review of Commission decisions requires that all reasonable doubts be resolved in favor of the Commission's decision.[9] The standard is whether "based on the evidence before the agency, a

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3 *See* Rule 16.1(c), Commission's Rule of Practice and Procedure; D.13-01-041 at 7 ("The purpose of a rehearing application is not to re-litigate policy determinations.").

4 *See* D.09-07-024 at 2 (holding that the vast majority of petitioner's arguments for rehearing were improper attempts to relitigate evidentiary issues decided by the Commission).

5 D.14-12-086 at 3.

6 *See Pacific Tel. & Tel. Co. v. Pub. Utilities Comm'n*, 62 Cal.2d 634, 647 (1965) (There is a "strong presumption of the correctness of the findings…of the commission, which may choose its own criteria or method of arriving at its decision.").

7 *SFPP, L.P. v. Pub. Utilities Comm'n*, 217 Cal. App. 4th 784, 794 (2013) ("[i]t is for the agency to weigh the preponderance of conflicting evidence….") (internal quotations and citations omitted); *see also Eden Hospital Dist. v. Belshe*, 65 Cal. App. 4th 908, 915 (1998).

8 *SFPP*, 217 Cal. App. at 794 (internal quotations and citations omitted); *see also Greyhound Lines, Inc. v. Pub. Utilities Comm'n*, 68 Cal. 2d 406, 410-411 (1968).

9 *Harris v. City of Costa Mesa*, 25 Cal. App. 4th 963, 969 (1994) ("[T]he reviewing court must resolve reasonable doubts in favor of the administrative findings and decision.") (internal quotations and

reasonable person could not reach the conclusion reached by the agency;" not whether opponents claim that the evidence is insufficient.[10] If the record contains substantial evidence supporting the agency's determination, then the determination must be upheld.[11]

The AFRs filed by CEJA/Sierra Club and CBD do not identify "legal error." Instead, they reiterate and reassert arguments and issues previously raised in this proceeding under the guise of "legal error." For example, starting in its Opening Brief and continuing through its Opening and Reply Comments on Commissioner Peterman's Alternate Decision, CEJA has argued the following: SCE was required to take environmental justice criteria into consideration in its RFO,[12] SCE did not prioritize renewable projects in environmental justice communities in violation of Public Utilities Code § 399.13(a)(7),[13] the Commission failed to conduct Commission review of SCE's procurement plan,[14] the Commission was required to await environmental review of the Puente project before approval pursuant to the California Environmental Quality Act ("CEQA"),[15] and SCE relied on a "hearsay, qualitative factor"[16] in the selection of the Puente contract, and not quantitative and qualitative factors.[17]

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citation omitted); *see also , e.g., Utility Consumers' Action Network v. Pub. Utilities Comm'n*, 187 Cal. App. 4th 688, 696–97 (2010).

10 *Harris*, 25 Cal. App. 4th at 969.

11 *Barthelemy v. Chino Basin Mun. Water Dist*., 38 Cal. App. 4th 1609, 1620 (1995).

12 CEJA Opening Brief at 5-11; CEJA Reply Brief at 1-8; CEJA Reply Comments on ALJ DeAnglis' Proposed Decision ("PD") and Commissioner Florio's Alternate PD at 2-5; CEJA's Opening Comments on Commissioner Peterman's Alternate Decision at 4-6; CEJA's Reply Comments on Commissioner Peterman's Alternate Decision at 4-5.

13 CEJA's Opening Brief at 10-11; CEJA Reply Brief at 5-6; CEJA's Opening Comments on Commissioner Peterman's Alternate Decision at 9-11; CEJA's Reply Comments on Commissioner Peterman's Alternate Decision at 3-4. *See also* CEJA Reply Brief at 5-6; CEJA Opening Comments on ALJ DeAnglis' PD and Commissioner Florio's Alternate PD at 3; CEJA Reply Comments on ALJ DeAnglis' PD and Commissioner Florio's Alternate PD at 2-3.

14 CEJA Opening Brief at 6-7; CEJA's Opening Comments on Commissioner Peterman's Alternate Decision at 11-13.

15 CEJA Opening Brief at 22-25; CEJA Reply Brief at 14-17.

16 CEJA/Sierra Club AFR at 16.

17 CEJA Opening Brief at 11-19; CEJA Reply Brief at 8-13; CEJA Opening Comments on ALJ DeAnglis' PD and Commissioner Florio's Alternate PD at 7-10; CEJA's Opening Comments on Commissioner Peterman's Alternate Decision at 15.

Similarly, the CBD AFR reiterates the exact arguments it has made throughout the proceeding, most notably, that the Commission cannot approve the Puente project without completion of CEQA review,[18] the Commission's approval of the results of the LCR RFO is in violation of the Loading Order,[19] the LCR RFO was biased against Preferred Resources[20] and it has not been demonstrated that 215-290 megawatts ("MW") are needed in the Moorpark sub-area.[21]

Additionally, although CEJA/Sierra Club and Oxnard "do[] not contest Commission approval of the energy efficiency and renewable projects approved as part of D.16-05-050[,]"[22] CBD's AFR calls into question the approval of the entire RFO process and all approved contracts. By not limiting its AFR to the approval of specific contracts, CBD jeopardizes *all* of the contracts approved in D.16-05-050, including all of the Preferred Resource contracts. The Preferred Resource contracts face the most risk because of earlier commercial operation deadlines.[23] This is inconsistent with the premise of CBD's arguments regarding the importance of the Loading Order and Preferred Resources.

Contrary to the parties' assertions, D.16-05-050 is not unlawful or erroneous, and there is a robust record in this proceeding supporting the findings and conclusions in the decision. Furthermore, CBD's AFR seeks to place all of the contracts approved in D.16-05-050 at risk, without basis. Therefore, SCE respectfully requests that the Commission expeditiously deny the parties' AFRs.

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[18] CBD Protest at 13-14. CBD Opening Brief at 16-17; CBD Reply Brief at 2-16.

[19] CBD Protest at 5-6; CBD Opening Brief at 2-7; CBD Opening Comments on ALJ DeAngelis' PD and Commissioner Florio's Alternate PD at 2-4.

[20] CBD Protest at 6-11; CBD Opening Brief at 8-11; CBD Opening Comments on ALJ DeAngelis' PD and Commissioner Florio's Alternate PD at 7-9.

[21] CBD Protest at 11-13. CBD Opening Brief at 11-16; CBD Opening Comments on ALJ DeAngelis' PD and Commissioner Florio's Alternate PD at 9-13.

[22] CEJA/Sierra Club AFR at 1.

[23] Exhibit SCE-1, SCE's Opening Testimony, at 52 (Summary of Energy Efficiency Selected Offers), 53 (Summary of Renewable Distributed Generation Selected Offers).

II.

D.16-05-050 IS NOT UNLAWFUL OR ERRONEOUS

A. D.16-05-050 Does Not Violate the Requirements of the Long Term Procurement Plan Track 1 Decision, the Loading Order or Any Other Law

Many of the claims made by CEJA/Sierra Club and CBD directly question the Commission's interpretation of its own decisions and the Public Utilities Code. Yet, the Commission's interpretation of its own decisions "is entitled to consideration and respect[,]"[24] and its "interpretation of the Public Utilities Code should not be disturbed unless it fails to bear a reasonable relation to statutory purposes and language."[25] As will be explained below, the parties' arguments do not meet the aforementioned standards and their AFRs should be rejected.

1. D.16-05-050's Approval of the Puente Contract is Not Unlawful or Erroneous

The thrust of CEJA/Sierra Club's AFR is that the Commission acted unlawfully by approving the Puente contract because SCE did not address environmental justice issues in the selection of the project.[26] By focusing on one qualitative consideration amongst many factors and analyses that went into the selection of resources through a complicated and unprecedented RFO, CEJA/Sierra Club provide a very narrow and skewed view of the law, SCE's LCR RFO, and the selected offers. To provide some perspective, SCE submitted its LCR Procurement Plan to Energy Division ("ED") on July 15, 2013, launched the LCR RFO on September 12, 2013, received final offers on September 4, 2014, communicated offer awards in October 2014, submitted its application in November 2014, received a PD and Alternate PD in January 2016 and received a final decision in May 2016.[27] Thus, CEJA/Sierra Club are asking

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[24] *Clean Energy Fuels Corp. v. Pub. Utilities Comm'n*, 227 Cal. App. 4th 641, 649 (2014).
[25] *Greyhound Lines, Inc. v. Pub. Utilities Comm'n*, 68 Cal. 2d 406, 410 (1968).
[26] CEJA/Sierra Club AFR at 1-2.
[27] Exhibit SCE-1, SCE's Opening Testimony, at 4, 9-11, 28, Exhibit SCE-2, Appendix D: IE Report, at D-67-D-72.

the Commission to negate nearly three years' worth of work and countless hours of resources that went into the planning, organization and administration of an RFO that SCE was ordered to conduct (including developer time and resources dedicated to bid submittal and investor approval), that not only involved consultation with an Independent Evaluator ("IE"), but SCE's Cost Allocation Mechanism ("CAM") Group and ED.[28] The LCR RFO was unprecedented in breadth and complexity and employed countless hours of resources to determine contracts, valuation parameters, and selection processes. CEJA/Sierra Club, however, turn this complex process on its head by arguing that a single qualitative factor negates all other factors and all of this effort. CEJA/Sierra Club argue that environmental justice issues must be considered at any cost and above all other factors in determining procurement selections. This position has no basis in the law and should be rejected.

As demonstrated in D.16-05-050, and supported by the record in this proceeding, including SCE's Application, testimony, and filings, the Commission's approval of the Puente contract is reasonable, consistent with least-cost best-fit ("LCBF") principles,[29] needed to meet long-term local capacity requirements, and satisfies the procurement authorization granted by the Commission. CEJA/Sierra Club's claims that the Commission unlawfully approved the Puente contract fail for the reasons set forth below, and as a result, their AFR should be denied.

a) <u>The Commission's Consideration of Environmental Justice Issues in the Approval of the Puente Contract is Reasonable</u>

CEJA/Sierra Club argue that "[b]y failing to acknowledge that the 'criteria laid out in D.13-02-015' includes environmental justice in procurement, and by failing to apply other laws, rules and precedent, the Commission fails to proceed in the manner required by

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[28] *See* Exhibit SCE-1, SCE's Opening Testimony, at 19-22; Exhibit SCE-2, Appendix D: IE Report; Exhibit SCE-3: Appendix E: Solicitation Materials.

[29] *See* D.04-12-048 at 158 ("The Commission has adopted the policy of LCBF which dictates that the IOUs obtain the best and most cost effective product for their customers.").

law."[30] Specifically, CEJA/Sierra Club argue that the Commission's finding that the reference to environmental justice in D.07-12-052 is "dicta" and "remains in effect as guidance"[31] fails for three reasons: (1) the Commission cannot "diminish the legal significance of environmental justice" because it is not referenced in an ordering paragraph; (2) the Commission included the environmental justice guidance in D.07-12-052 in the 2010 Procurement Policy Manual; and (3) "nothing in D.07-12-052 suggests that implementation of environmental justice considerations in procurement must await additional 'guidance.'"[32] CEJA/Sierra Club's arguments should be rejected.

First, the reasoning behind CEJA/Sierra Club's argument that the Commission somehow "diminish[ed] the legal significance of environmental justice" because it is not referenced in an ordering paragraph is not sound. The decision that CEJA/Sierra Club reference to support their position is not on point and their reliance on it is misplaced. The discussion in D.14-12-024 focused on whether the Commission had a policy "regarding the use of back-up generation in demand response programs" and provided a "historical timeline of Commission decisions regarding backup generation" that went back as far as 2003.[33] The decision pointed out that the Commission had "clearly adopted a policy statement…in [D.11-10-003] both the discussion and a conclusion of law."[34] The policy statement being supported by the Commission in D.14-12-024 is different than the statement made in D.07-12-052 regarding providing "greater weight" to "disproportionate resource sitings in low income and minority communities."[35] The statement in D.14-02-024 provided clear direction, specifically, "[a]s a general policy, we do not want to allow fossil-fueled emergency back-up generation to receive

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30 CEJA/Sierra Club AFR at 6.
31 D.16-05-050 at 17.
32 CEJA/Sierra Club AFR at 6-7.
33 D.14-12-024 at 52-53.
34 *Id*. at 55.
35 D.07-12-052 at 157.

system or local RA credit as demand response resources[,]"[36] and was supported by years of Commission decisions supporting the statement.[37] The statement in D.07-12-052 was clear, but was not presented "as a general [Commission] policy" and certainly was not supported by years of precedent. Therefore, CEJA/Sierra Club's reliance on D.14-12-024 to establish its argument is misplaced.

CEJA/Sierra Club's reliance on the "2010 Procurement Policy Manual" is also misplaced. CEJA/Sierra Club contend that because the Procurement Manual references D.07-12-052 and its discussion regarding providing "greater weight" to "disproportionate resource sitings in low income and minority communities[,]"the discussion in D.07-12-052 should not be viewed as "dicta."[38] However, the Commission has declined to "adopt" the Rulebook/Procurement Policy Manual "as a standalone enforceable document."[39] Therefore, CEJA/Sierra Club's reliance on the Manual is misplaced.

Finally, CEJA/Sierra Club argue that "nothing in D.07-12-052 suggests that implementation of environmental justice considerations in procurement must await additional 'guidance.'"[40] SCE does not dispute that D.07-12-052 states the following:

> Some criteria for which we believe the IOUs need to provide greater weight include disproportionate resource sitings in low income and minority communities, and environmental impacts/benefits (including Greenfield vs. Brownfield development).[41]

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36 *See* D.11-10-003 at 26 ("As a general policy, we do not want to allow fossil-fueled emergency back-up generation to receive system or local RA credit as demand response resources. In decisions on the IOUs' last three demand response program budget cycles (2005-2011), we have consistently stated that demand response programs that rely on using back up generation were contradictory to our vision for demand response and the Loading Order.").

37 D.14-12-024 at 53-55.

38 CEJA/Sierra Club AFR at 7.

39 D.12-04-046 at 63.

40 CEJA/Sierra Club AFR at 7.

41 D.07-12-052 at 155-156.

However, the parties' sole focus is on the environmental justice criterion, while disregarding the "Greenfield vs. Brownfield" criterion and an *order* in the very same decision that states: "IOUs are to consider the use of Brownfield sites *first* and take full advantage of their location *before they consider building new generation on Greenfield sites*. If IOUs decide not to use Brownfield, *they must make a showing that justifies their decision*."[42] D.07-12-052 did not find, conclude or order that "disproportionate resource sitings in low income and minority communities" should supersede all other quantitative and qualitative criteria or that it should be an overarching consideration when selecting a contract. The Commission simply stated that there are "criteria for which we believe the IOUs need to provide greater weight."[43] The Commission did not recommend providing "greater weight" to those factors despite the costs to customers and at the cost of all other quantitative and qualitative considerations evaluated through the LCBF methodology. SCE relied on the Commission's order that "IOUs are to consider the use of Brownfield sites *first* and take full advantage of their location *before they consider building new generation on Greenfield sites*."[44] In this instance, this meant not creating additional environmental impacts by selecting a greenfield site.

(1) The Commission Properly Concluded That Public Utilities Code Section 399.13(a)(7) Does Not Apply to Resources Sought Through the LCR RFO

CEJA/Sierra Club's reliance on Public Utilities Code Section 399.13(a)(7) to support its environmental justice arguments is misplaced.[45] CEJA attempts to apply a statute that regulates the Renewables Portfolio Standard ("RPS") Program, including RPS procurement, to the LCR RFO procurement ordered through the Long Term Procurement

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42 D.07-12-052 at 305 (Ordering Paragraph ("OP") 35) (emphasis added); *see also* D.04-12-048 at 159, 222 (Finding of Fact ("FOF") 101), 235 (Conclusion of Law ("COL") 28).
43 D.07-12-052 at 155-156.
44 D.07-12-052 at 305 (OP 35) (emphasis added); *see also* D.04-12-048 at 159, 222 (FOF 101), 235 (COL 28).
45 CEJA/Sierra Club AFR at 8-9.

Plan ("LTPP") proceeding in D.13-02-015. Public Utilities Code Section 399.13 provides for requirements related to the utilities' RPS procurement plans and RPS solicitations, but does not apply to non-RPS solicitations. The resources procured through the LCR RFO were not procured through the RPS program, they were procured by order in the LTPP proceeding. CEJA's application of the statute is also misplaced. Section 399.13 provides that the utilities should give preference to RPS projects that provide benefits to environmental justice communities.[46] For the LCR RFO, SCE selected every renewable project that was available, eliminating the need for this preference.

b) The Commission's Decision is Not Discriminatory

CEJA/Sierra Club argue that the Commission has failed to comply with the state's anti-discrimination laws by approving the Puente project.[47] This argument should be rejected.

First, CEJA/Sierra Club's reliance on Government Code Section 65040.12(e) is misplaced.[48] Government Code Section 65040 is applicable to the Governor's Office of Planning and Research.[49] Government Code Section 65040.12(a) states that "[t]he office shall be the coordinating agency in state government for environmental justice programs[;]" and in Section 65040.12(e) goes on to state that "[f]or the purposes of this section, 'environmental justice' means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental

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[46] Cal. Pub. Utilities Code § 399(a)(7): "In soliciting and procuring eligible renewable energy resources for California-based projects, each electrical corporation shall give preference to renewable energy projects that provide environmental and economic benefits to communities afflicted with poverty or high unemployment, or that suffer from high emission levels of toxic air contaminants, criteria air pollutants, and greenhouse gases."

[47] CEJA/Sierra Club AFR at 9-10.

[48] *Id*. at 9.

[49] Cal. Gov't Code § 65040 ("The Office of Planning and Research shall serve the Governor and his or her Cabinet as staff for long-range planning and research, and constitute the comprehensive state planning agency.").

laws, regulations, and policies."[50] Thus, CEJA/Sierra Club's argument that the obligations of the Governor's Office of Planning and Research are applicable to the Commission is incorrect.

CEJA/Sierra Club also assert that D.16-05-050 violates Government Code Section 11135. Government Code Section 11135(a) states:

> No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.[51]

Thus, CEJA/Sierra Club are claiming that the Commission's approval of the Puente contract was an act of discrimination based on "race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability."[52] The Commission's approval of the Puente contract was not an act of discrimination as represented in Section 11135, and as a result, CEJA/Sierra Club's argument fails.

c) The Commission Appropriately Considered Whether SCE Followed Its Procurement Plan

CEJA/Sierra Club assert that by "failing to conduct Commission review of SCE's procurement plan…the Commission has unlawfully denied the parties their constitutional right to due process."[53] This is not correct. The Commission appropriately determined that this proceeding was intended to "consider[] whether SCE followed its Procurement Plan, not whether the plan itself was adequate."[54]

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50 Cal. Gov't Code § 65040.12(e).
51 Cal. Gov't Code § 11135(a).
52 *Id.*
53 CEJA/Sierra Club AFR at 11.
54 D.16-05-050 at 18.

CEJA/Sierra Club contend that "it is the Commission's statutorily-mandated duty, not the Energy Division's, to review and approve IOU procurement plans."[55] They also claim that it was improper for the Commission to find that "[i]f CEJA or another party contended that the process authorized in D.13-05-015 for review of SCE's procurement plan was unlawful, they could have filed an application for rehearing of that decision on this point."[56] Yet, CEJA and Sierra Club were parties to the LTPP Track 1 and 4 proceedings, so they should have been aware, when it was issued, that the Track 1 decision ordered SCE to submit its LCR Procurement Plan to Energy Division for approval. CEJA and Sierra Club could have challenged the Commission's order at that time, but failed to do so. Indeed, both CEJA and Sierra Club filed a petition for modification in the 2012 LTPP proceeding seeking to modify the LTPP Track 4 decision to require formal notice of and comment on the LCR procurement plan that San Diego Gas & Electric Company ("SDG&E") was ordered to submit to ED for approval.[57] Thus, these parties should have been aware, based on previous experience, that they could and should have filed their challenge to the Commission's decision to "delegate its power to the Energy Division without retaining final approval and review"[58] in the 2012 LTPP proceeding. Furthermore, contrary to CEJA/Sierra Club's claims, the Commission's finding on this issue does not state that the "parties waived rights to challenge the procurement plan;"[59] instead, the Commission properly held that if the parties disagreed with the process for utility procurement plan approval that was established in the LTPP Track 1 proceeding, they should have challenged D.13-02-015 on *that* point (*i.e.*, the process authorized for review of SCE's LCR procurement plan). Accordingly, the parties' arguments on this issue are procedurally improper, lack merit, and should be rejected.

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55 CEJA/Sierra Club AFR at 12.
56 D.16-05-050 at 18.
57 D.14-08-008 at 4.
58 CEJA/Sierra Club AFR at 11.
59 *Id.*

d) The Commission Did Not Need to Conduct CEQA Review Before Approving the Puente Contract

CBD, Oxnard and CEJA/Sierra Club contend that the Commission unlawfully approved the Puente contract before (1) conducting an environmental review of the project pursuant to CEQA or (2) awaiting completion of environmental review by the California Energy Commission ("CEC").[60] These arguments are incorrect. The Commission has a long-standing precedent, going back 30 years, of consistently rejecting the arguments raised by the parties.[61] Over the years, the Commission has clearly defined its appropriate role in approving long-term contracts/power purchase agreements ("PPAs"). For example, in a proceeding in which cost recovery was being sought for five PPAs negotiated between SCE and County Sanitation Districts of Los Angeles County, the Commission stated in its decision that prior Commission decisions made clear that CEQA does not apply to Commission review of PPAs.[62] The Commission provided the following rationale:

> [O]ur jurisdiction with respect to power purchases extends to the electric utility, not the qualifying facility. Specifically, we are empowered to determine and approve the prices, terms, and conditions of the electric utility's purchase of power from the qualifying facility.
>
> At issue in this proceeding, as in each case involving the review of a nonstandard agreement, is the prudency of the economic terms of the utility's purchase of power from the qualifying facility and not the adequacy of the facility itself. We note that the Sanitation Districts' requested relief is limited to such a prudency determination which would assure Edison of recovery of costs associated with the agreements through rates. Such an order is one which is quite clearly an exercise of our ratemaking authority to

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60 *See* CBD AFR at 4-22; Oxnard AFR at 1; CEJA/Sierra Club AFR at 14-15.

61 *See, e.g.*, Resolution E-4171 at 15-16; Resolution E-4439 at 18; Resolution E-4467 at 24; Resolution E-4686 at 17 ("'[T]he scope of this resolution is confined to assessing…whether the price and terms of the PPA are reasonable; and whether payments made by PG&E under the CA Flats PPA are fully recoverable in rates. Approval of PG&E's anticipated costs for the CA Flats PPA is not an 'approval' of a 'project' within the meaning of CEQA."); D.86-06-060 at 29-30; D.86-10-044 at 16-18.

62 D.86-06-060, 1986 Cal. PUC LEXIS 424, at *29 (June 25, 1986).

> which CEQA does not apply. We therefore find that a grant of the relief requested by the Sanitation Districts will not constitute a "project" subject to CEQA requirements.[63]

The Commission revisited this issue more recently in D.15-05-051, the decision approving SDG&E's LCR procurement, in which it stated:

> CEQA Guidelines, long-standing case law, and Commission precedent all make clear that Commission review of purchase power contracts does not trigger CEQA. A contract for purchase power by a regulated entity is not a "project" pursuant to CEQA. CEQA defines a "project" as "[a]ctivities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." (Public Resources Code § 21065.) Commission approval of a purchase power contract does not confer a lease, permit, license, certificate, or any other entitlement on the seller. Rather, it is an assurance that the utility will recover through its rates the costs that it incurs under the contract. It is well-settled that "[s]uch a ratemaking order is not [a] 'project' under CEQA." … Likewise, the Commission is not a "responsible agency" under CEQA when it approves purchase power contracts. A "responsible agency" is defined as a public agency other than the lead agency which has discretionary approval power over the project….While the Commission has considerable discretion over whether to approve a purchase power contract, it does not have power to approve or deny the underlying generation project. The project underlying the purchase power contract could proceed regardless of the Commission's decision.[64]

None of the AFRs has provided any basis upon which to alter the Commission's past practice and precedent; thus, their arguments should be rejected.

In its AFR, Oxnard refers back to the arguments in its briefing,[65] where it asserts that the "approval of the NRG contract will significantly constrain the CEC's ability to

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[63] *Id*. at *29-30 (internal citations omitted).

[64] D.15-05-051 at 29-30. *See also* D.15-11-024 (In purchase power tolling agreement "applications, the utility, and not the project proponent, is the applicant. Here, we do not have jurisdiction over…the underlying project proponent, and do not approve or disapprove the generation project itself. It is [project proponent] which is actually proposing to construct the plant, and its application to construct the…Project has been considered by the California Energy Commission ("CEC") in separate proceedings outside of this agency.").

[65] Oxnard AFR at 1.

consider project alternatives."[66] Although the City has not substantiated this claim, it argues that based on *Save Tara v. City of West Hollywood*, "before conducting CEQA review, agencies must not 'take any action' that significantly furthers a project 'in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.'"[67] However, *Save Tara* is distinguishable from Commission precedent on the "project" issue. In *Save Tara*, "an agency reache[d] a binding, detailed agreement with a private developer and publicly committed resources and governmental prestige to [the] project," so that "as a practical matter, the agency [] committed itself to the project as a whole…effectively preclud[ing] any alternatives or mitigation measures that CEQA would otherwise require to be considered…."[68] As the Commission has stated in past precedent, when the Commission approves a PPA, it is not conferring a type of entitlement on the seller, such as a lease, nor does the Commission have discretionary approval over such projects – in *Save Tara*, there was clearly a "project" and the City of West Hollywood was most definitely a "responsible agency," as the city was involved in developing and approving the project. Moreover, the PPAs approved by the Commission have termination rights based on a failure to obtain permitting. The facts in this proceeding are distinguishable from *Save Tara* and Oxnard's reliance upon the case is misplaced. As a result, Oxnard's argument should be rejected.

e) The Commission's Approval of the Puente Contract is Supported by the Record in this Proceeding

CEJA/Sierra Club argue that D.16-05-050 "errs in concluding that SCE relied on both quantitative (and non-hearsay) factors and qualitative (and admittedly hearsay) factors to award the contract for the Puente Project" because it took "at face value SCE's assertion that 'the qualitative factors reinforced SCE's quantitative assessment that the NRG

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66 Oxnard Opening Brief at 18.
67 *Save Tara v. City of West Hollywood*, 45 Cal. 4th 116, 138 (2008).
68 *Id.* at 139.

Energy Center was the best option to meet the LCR need.'"[69] CEJA/Sierra Club go so far as to claim that "SCE did not, in fact, combine, 'qualitative and quantitative factors' to arrive at its conclusion to award a contract for the Puente Project; it relied on the hearsay, qualitative factor to offer to restructure the terms with NRG."[70] As a result, CEJA/Sierra Club claim that the Commission incorrectly relied on hearsay in approving the Puente contract.[71] CEJA/Sierra Club's claims are flawed and demonstrate a lack of understanding of SCE's valuation and selection process, and therefore, should be rejected.[72]

SCE utilized a least-cost, best-fit methodology in evaluating final offers for the Moorpark sub-area.[73] In SCE's Opening Testimony, there is an entire chapter devoted to explaining SCE's valuation process and the criteria used during its evaluation and selection of offers.[74] The chapter contains details surrounding SCE's valuation and selection methodology, including the "quantitative component of the evaluation [which] entails forecasting (1) the value of the contract benefits, (2) the value of the contract costs, and (3) the net value between (1) and (2),"[75] and a discussion on the assessment of qualitative attributes, or the "non-quantifiable characteristics of each offer."[76] In the same chapter, SCE provides a summary of the valuation results[77] and its selections.[78]

As explained in SCE's Opening Testimony, SCE's quantitative valuation is not influenced by qualitative factors.[79] SCE's quantitative assessment is simply an unbiased

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69 CEJA/Sierra Club AFR at 15.
70 *Id*. at 16.
71 *Id*. at 15.
72 SCE also responded to these arguments in its Reply Brief. *See* SCE's Reply Brief at 9-12.
73 Exhibit SCE-1C, SCE's Opening Testimony, at 30 ("In accordance with D.04-12-048, SCE used a LCBF methodology to value and award contracts in the LCR RFO.").
74 *Id*. at 30-49.
75 *Id*. at 31.
76 *Id*. at 39.
77 The results of the valuation analysis for all offers can be found in SCE's workpapers at Exhibit CO-5C at 139-162.
78 Exhibit SCE-1C, SCE's Opening Testimony, at 41-49.
79 *Id*. at 31-38.

forecast of each offer's benefits and costs to SCE's customers,[80] and forms the basis for the "cost" in SCE's LCBF methodology. The quantitative assessment of every offer in the LCR RFO was conducted consistently across all offers using the same valuation framework and market price forecasts (energy, ancillary services, and resource adequacy price forecasts), without regard for qualitative concerns. Under this objective number-based valuation, the Puente contract offer provided the most value to SCE's customers from those offers that would be needed to meet the Commission's minimum LCR procurement requirement. Furthermore, the valuation framework and market price forecasts were established and prepared before offers were received, and validated by SCE's IE.[81] Specifically, for gas-fired generation ("GFG"), SCE utilized the same production-cost model (using each offer's operating characteristics such as capacity, heat-rates, start costs, etc.), the same Monte Carlo simulation, and the same discounting methodology to arrive at each offer's net present value ("NPV").[82]

SCE did use qualitative factors to arrive at its final selection of offers;[83] the qualitative factors SCE considered in selecting the Puente contract included the project being located on a brownfield site and the [redacted] [84] However, the selection of the Puente contract was not based entirely on a qualitative factor as CEJA/Sierra Club claim.[85] Nor was the qualitative factor the reason SCE structured the Puente contract as an RA-only contract. Indeed, SCE had already completed its quantitative assessment of the GFG

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[80] *Id.* at 31-32 ("The quantitative component of the evaluation entails forecasting (1) the value of the contract benefits, (2) the value of the contract costs, and (3) the net value between (1) and (2). SCE calculated each offer's forecasted quantity of RA capacity, electrical energy, and AS using a combination of models specific to each resource type. SCE then multiplied these quantities by the respective market price forecasts. These calculations represent (1) the value of the contract benefits based on the forecasted market value for each resource. SCE then calculated (2) the contract costs required to realize this market value, including estimates of capacity payments, variable operations and maintenance ("VOM") costs, start-up payments, and fuel costs to generate electrical energy. These elements were used to determine the cost effectiveness of each resource.").

[81] Exhibit SCE-2, Appendix D: Independent Evaluator Report, at D-24.

[82] Exhibit SCE-1, SCE's Opening Testimony, at 34.

[83] *Id.* at 39, 44.

[84] *Id.* at 56; Exhibit SCE-2C, Appendix D: Independent Evaluator Report, at D-69.

[85] CEJA/Sierra Club AFR at 16.

final offers and made its final offer selection [redacted].[86] As stated in the IE Report submitted with SCE's Opening Testimony:

[redacted][87]

Thus, as confirmed by the IE Report, the qualitative factors discussed above *did reinforce* SCE's quantitative assessment that the Puente project was the best option to meet the LCR need, and SCE's selection of the Puente contract was not a result of its reliance on a "hearsay, qualitative factor."[88] Thus, CEJA/Sierra Club's argument that the Commission relied on hearsay to approve the Puente contract is without basis and should be rejected.

Moreover, contrary to CEJA/Sierra Club's assertion, the Commission can give some weight to SCE's consideration of the [redacted] as part of its qualitative analysis.[89] "The Commission's proceedings are governed by its rules of practice and procedure, 'and in the conduct thereof the technical rules of

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[86] Exhibit SCE-2, Appendix D: Independent Evaluator Report, at D-71 – D-72 [redacted]

[87] *Id*. at D-69.

[88] CEJA/Sierra Club AFR at 16.

[89] *Id*. at 16-17.

evidence need not be applied.'"[90] "The Commission's own precedent establishes that hearsay evidence is admissible in its proceedings [; and] [t]he Commission generally allows hearsay evidence if a responsible person would rely upon it in the conduct of serious affairs."[91] The Commission has also found that "'hearsay evidence is admissible in an administrative hearing and may be relied upon if supported by other credible evidence.'"[92] The [redacted] was one factor considered in SCE's qualitative analysis, and thus, would not "not serve as the *sole* factual basis for [a] Commission[] finding[,]" approving the Puente contract.[93] As demonstrated in SCE's Application, testimony (and appendices and workpapers in support thereof), and briefing, there is certainly "other competent, substantial evidence [that would] support [a] Commission[] decision"[94] approving the Puente contract.

2. D.16-05-050's Approval of the Results of the LCR RFO is Not Unlawful, Erroneous or an Abuse of Discretion

CBD argues that the Commission's approval of the results of the LCR RFO is in violation of the Loading Order and the Track 1 decision.[95] CBD's AFR relies heavily on the argument that the Commission abused its discretion and acted unlawfully because it did not make any findings of fact or conclusions of law on certain issues that CBD believes are material to the proceeding.[96] This argument is flawed. As the Commission determined in D.16-05-053:

> It is within the Commission's discretion to determine what factors are material to its decision based on the issues before it. (*Clean Energy Fuels*

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90 *Util. Reform Network v. Pub. Utilities Comm'n*, 223 Cal. App. 4th 945, 959 (2014) (citing Public Utilities Code § 1701); *see* Rule 13.6(a) of the California Public Utilities Commission Rules of Practice and Procedure.

91 *Id.* at 959-960 (internal quotation marks and citations omitted).

92 D.99-01-029 at 7.

93 *Util. Reform Network v. Pub. Utilities Comm'n*, 223 Cal. App. 4th at 963.

94 *Id.*

95 CBD AFR at 2-4, 25.

96 *See* CBD AFR at 4, 23, 25, 27, 30, 32-33, 36.

> *Corp., v. Public Utilities Commission* (2014) 227 Cal. App. 4th 641, 659.) The Commission's "findings and conclusions are sufficient if they provide 'a statement which will allow us a meaningful opportunity to ascertain the principles and facts relied upon by the [Commission] in reaching its decision." (*Toward Utility Rate Normalization v. Public Utilities Com.* (1978) 22 Cal.3d 529, 540.) In other words, "a complete summary of all proceedings and evidence leading to the decision" is not required. (*Ibid.*) [Public Utilities Code] Section 1705 does not require the Commission to make express legal and factual findings as to each and every issue or sub-issue raised in a scoping memo or by a party to the proceeding.[97]

CBD's arguments also fail for the reasons set forth below. Therefore, the Commission should deny CBD's AFR.

a) <u>The Commission's Approval of the Results of the LCR RFO was Reasonable</u>

CBD makes a blanket assertion that that "[t]he RFO process was biased against Preferred Resources"[98] and argues that the RFO was "designed to discourage Preferred Resources."[99] These claims are baseless. As explained in its testimony and filings,[100] SCE did a tremendous amount of outreach to encourage the participation of all potential bidders in the LCR RFO, especially Preferred Resource bidders.[101] As stated in the IE Report, "Sedway Consulting concluded that SCE did a good job of publicizing the 2013 LCR RFO solicitation, and that the solicitation was quite robust, as evidenced by the substantial response that it received from the bidding community."[102] The IE Report went on to state that "[o]ver 200 Moorpark offers from more than 30 bidders were received. It was quite a robust response and included bids from all resource categories – as well as some new products that were not easy to categorize or which

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97 D.16-05-053 at 6.
98 CBD AFR at 22.
99 *Id.* at 28.
100 *See* Exhibit SCE-1, SCE's Opening Testimony, at 12, 15-16; Exhibit SCE-2, Appendix D: Independent Evaluator Report, at D-17, D-34 – D-35; Exhibit SCE-3, Appendix E: LCR Solicitation Materials; Exhibit SCE-7C, SCE's Rebuttal Testimony, at 12-13; SCE's Opening Brief at 13-15.
101 *See id.* for information on SCE's LCR RFO outreach efforts.
102 Exhibit SCE-2, Appendix D: Independent Evaluator Report, at D-35; *see also* SCE's Reply Brief at 23.

needed the development of a new product category, contract, and/or revised evaluation approach."[103] Ultimately, SCE selected all Preferred Resource final offers for the Moorpark sub-area, with the exception of some in-front-of-the-meter Energy Storage.[104]

CBD also suggests "[t]hat there are sufficient Preferred Resources available in the Moorpark sub-area to fill the LCR need."[105] However, if the Preferred Resources identified by CBD[106] were truly available and viable alternatives to the projects selected by SCE, including being incremental resources, then those resources should have been bid into the LCR RFO for the Moorpark sub-area. Projects not bid into the LCR RFO could not be evaluated and selected by SCE.

CBD also makes the following arguments in support of its claim that the Commission's approval of the RFO results was unlawful:

(1) CBD's Argument That "SCE Impermissibly Solicited Offers for Resources to Be Operational Well Before the Ordered Date of 2021"[107] Fails

CBD argues that SCE impermissibly solicited offers for resources to be operational before 2021, thus, the Commission's approval of the results of the LCR RFO was an abuse of discretion.[108] This is incorrect. In its Track 1 Procurement Plan, which was approved by Energy Division prior to the launch of the LCR RFO,[109] SCE stated that it would be

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[103] Exhibit SCE-2, Appendix D: Independent Evaluator Report, at D-17; *see also* SCE's Opening Brief at 13.
[104] Exhibit SCE-1, SCE's Opening Testimony, at 50; Exhibit SCE-2C, Appendix D: Independent Evaluator Report, at D-74, D-76, D-78.
[105] CBD AFR at 25.
[106] CBD states that the Southern California Regional Energy Network identified 200 MW of Preferred Resources available in the Moorpark sub-area. CBD AFR at 25.
[107] CBD AFR at 26.
[108] *Id*. at 26-27.
[109] Exhibit SCE-1, SCE's Opening Testimony, at 4; *see also* SCE's Reply Brief at 29.

soliciting offers in the RFO that would be online as early as 2015 in the Goleta area.[110] This is consistent with the Track 1 decision, which did not prohibit resources coming online before 2021 but merely required that resources be online *by* 2021.[111] Therefore, CBD's argument fails.

(2) CBD's Argument That "The RFO Schedule Did Not Allow Sufficient Time for Preferred Resources Vendors to Participate"[112] is Unsubstantiated

CBD asserts that "[t]he Commission did not make any findings of fact or conclusions of law regarding the material issue of whether the timing of the RFO was prejudicial to [P]referred [R]esource vendors."[113] As discussed above, this claim does not render D.16-05-050 unlawful or erroneous.

Moreover, CBD's claim that the RFO was "prejudiced against [P]referred [R]esource participation" is unsupported.[114] During the bidding and negotiation phase of the solicitation, the SCE LCR procurement team expended numerous hours with Preferred Resource bidders, walking them through the bid and award process and facilitating their ability to submit a final bid.[115] Additionally, the contractual delivery date security posting amount, which selected offers are required to post to SCE until delivery starts, on a $/kW basis was generally lower for Preferred Resources than conventional resources.[116] In short, SCE worked collaboratively and diligently with stakeholders and bidders to remove potential

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[110] Exhibit SCE-10, SCE's LCR RFO Procurement Plan, at 8-9; *see also* SCE's Reply Brief at 29. The 2015 date was later delayed to 2016 to reflect the delay in the schedule of the LCR RFO. *See* Exhibit SCE-1, SCE's Opening Testimony, at 9-11.

[111] D.13-02-015 at 131 (OP 2) ("[SCE] shall procure between 215 and 290 [MW] of electric capacity to meet local capacity requirements in the Moorpark sub-area of the Big Creek/Ventura local reliability area *by* 2021.") (Emphasis added); *see also* SCE's Reply Brief at 29.

[112] CBD AFR at 27.

[113] *Id*. at 27.

[114] *Id*. at 28.

[115] Exhibit SCE-7C, SCE's Rebuttal Testimony, at 13; *see also* SCE's Opening Brief at 15.

[116] *Id.*

obstacles that may have interfered with the ability of Preferred Resource service providers to contract with SCE.

Furthermore, the LTPP Track 1 decision required SCE to file one Application for approval of any and all contracts entered into as a result of the procurement process for new capacity in the Moorpark sub-area, and one Application for these purposes for the Western LA Basin.[117] Given these requirements for SCE's LCR RFO Applications, simultaneous competitive procurement of all resource types was necessary.[118] SCE held one LCR RFO and solicited resources for both the Western LA Basin and the Moorpark sub-area in that RFO.[119] In its Track 1 Procurement Plan approved by the Energy Division,[120] SCE expressed its intention to solicit resources in the Western LA Basin and Moorpark sub-areas through the LCR RFO.[121] Conducting one RFO in which resources would be sought from two procurement areas was reasonable, especially considering the Commission's directive that there was "an immediate need to begin a procurement process to meet LCR needs…in the Moorpark sub-area"[122] and "due to a seven to nine year lead time for conventional gas-fired resources."[123] Thus, SCE attempted to facilitate maximum participation of Preferred Resources in its solicitation consistent with the RFO timelines the Commission recommended and approved.

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[117] D.13-02-015 at 135 (OP 11); *see also* SCE's Reply Brief at 33.
[118] *See* SCE's Reply Brief at 33.
[119] *Id.*
[120] Exhibit SCE-1, SCE's Opening Testimony, at 4; *see also* SCE's Reply Brief at 33.
[121] Exhibit SCE-10, Track 1 Procurement Plan of Southern California Company Submitted to Energy Division Pursuant to D.13-02-015, at 4, 13; *see also* SCE's Reply Brief at 33.
[122] D.13-02-015 at 125 (FOF 42); *see also* SCE's Reply Brief at 33.
[123] *Id.* at 122 (FOF 25); *see also* SCE's Reply Brief at 33.

(3) CBD's Arguments Attempting to Establish That "The RFO Was Otherwise Designed to Discourage Preferred Resources"[124] Lack Merit

CBD argues that by approving the results of an RFO that was conducted in violation of Commission orders and the Loading Order, the Commission acted unlawfully and engaged in abuse of discretion. CBD's arguments in support of this claim lack merit for the reasons discussed below.

(a) "Failure to Provide Draft Contracts for DG Resources"[125]

CBD asserts that the LCR RFO was designed to discourage Preferred Resources because SCE did not offer bidders a pro forma agreement for Distributed Generation ("DG") resources.[126] Although SCE did not have a pro forma DG contract, SCE communicated through the RFO documents and at the bidder's conference that it was willing to work with bidders to customize contracts.[127] Offers were submitted for DG and SCE ultimately signed customized DG contracts with SunPower (parent company of Solar Star California).[128]

(b) "Security Required"[129]

CBD claims that "the requirement of security prejudiced the RFO against [P]referred [R]esources."[130] This claim is unsubstantiated. Although SCE required some level of development security for all resources to help ensure the resources

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[124] CBD AFR at 28.
[125] *Id.*
[126] *Id.* at 28-29.
[127] Exhibit SCE-3, Appendix E: Solicitation Materials, at E-11, E-25, E-137; *see also* SCE's Reply Brief at 29.
[128] Exhibit SCE-1, SCE's Opening Testimony, at 52-53; *see also* SCE's Reply Brief at 29.
[129] CBD AFR at 29.
[130] *Id.*

showed up to maintain the reliability of the system, SCE had different development security requirements for different products.[131] In fact, the development security amount for Preferred Resources was significantly lower than that of GFG.[132]

(c) "Resources Excluded Based on CAISO Failure to Study"[133]

CBD argues that SCE wrongfully excluded two-hour products, and the Commission wrongly deferred to the California Independent System Operator ("CAISO") on this issue.[134] Although a two-hour product may have contributed to the LCR need, it ultimately would not have counted towards Resource Adequacy ("RA") requirements under the current rules, which require four-hour products. It is important to note that while SCE was working with the CAISO to identify minimum operational characteristics for LCR resources (as required by the LTPP Track 1 Decision), participants in the LCR RFO were required to submit offers for four-hour resources in addition to any lower duration.[135] In addition, SCE requested that the final decision in the 2014 RA proceeding adopt a CAISO-defined quantity of two-hour resources that will meet the LCR need.[136] SCE's request was denied. Instead, the Commission directed the Energy Division to work with the CAISO to further refine policies regarding this issue.[137] Thus, the Commission and CAISO are still working through the issues of allowing two-hour resources to count towards grid reliability requirements.

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131 Exhibit SCE-3, Appendix E: Solicitation Materials, at E-153; *see also* SCE's Reply Brief at 29-30.
132 *Id.*
133 CBD AFR at 29.
134 *Id.* at 29-30.
135 Exhibit SCE-2, Appendix D: Independent Evaluator Report, at D-23 ("[A]ll bidders of applicable products (ES and DR) were required to provide 4-hour bids to be deemed compliant with the RFO instructions but had been given the option to provide 2-hour offers…."); *see also* SCE's Reply Brief at 27.
136 R.11-10-023, Opening Comments of Southern California Edison Company (U338-E) on the Proposed Decision Adopting Local Procurement and Flexible Capacity Obligations for 2015, and Further Refining the Resource Adequacy Program, June 16, 2014, at 2-3; *see also* SCE's Reply Brief at 27.
137 D.14-06-050 at 31; *see also* SCE's Reply Brief at 27.

Furthermore, as the Commission made clear in the Track 1 decision, it was important that SCE procure resources through its LCR RFO that "would [] pas[s] [CA]ISO muster."[138] It was also important that the selected resources meet LCR requirements, which included RA compliance. Procuring resources that "would not pas[s] [CA]ISO muster"[139] and did not meet LCR requirements did not make sense because the products would have been ineffective in meeting critical reliability requirements, and thus, would not have allowed SCE to comply with the LTPP Track 1 decision.

(4) CBD's Argument Challenging the Need Determination Established in the Track 1 Proceeding is Improper

CBD argues that by approving SCE's procurement of 274.16 LCR MW, which is well within the 215-290 MW procurement authorization established in the LTPP Track 1 decision, the Commission has unlawfully failed to "ensur[e] that the IOUs do not procure more power than needed."[140] CBD also argues that the "Commission abused its discretion in granting complete deference to the opinions of CAISO" by not making "any findings of fact or conclusions of law on material[] issues regarding the accuracy of [CAISO's] modeling."[141] Both of these arguments are incorrect and improper for the reasons discussed below, and therefore, should be rejected. Moreover, the Commission has communicated its preference for not reconsidering the Commission's original need determinations.

> Our long term procurement proceedings are intended to monitor changes in forecasts. In order to permit timely action in response to Commission determinations of need for new generation resources, it is crucial that we not be sidetracked by second-guessing recent determinations absent evidence of significant errors.[142]

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[138] D.13-02-015 at 75.
[139] *Id.*
[140] CBD AFR at 30.
[141] *Id.*
[142] D.06-11-048 at 10.

(a) The McGrath Peaker Was Modeled in the CAISO's Analysis

CBD argues that the McGrath peaker was not modeled in the 2012 LTPP Track 1 analysis, therefore, the approval of procurement based on Track 1 modeling is an abuse of discretion.[143] The McGrath peaker was modeled in the CAISO's analysis which was utilized by the Commission to develop the needs authorization in the 2012 LTPP Track 1 proceeding.[144] Furthermore, as SCE testified, the McGrath peaker was modeled in the 2014-15 CAISO Transmission Plan.[145] Therefore, the Commission adequately considered the McGrath peaker in its analysis and no adjustment to the need authorization is necessary.

(b) The 2014-2015 CAISO Transmission Plan Demonstrates That SCE's Procurement is Necessary to Maintain Reliability

CBD argues that "[t]he Commission accorded CAISO undue deference and failed to make findings regarding the material issue of fact of whether the 2014-2015 Transmission Plan demonstrates that the Track 1 needs determination is still valid."[146] CBD also asserts that CAISO's 2014-15 Transmission Plan is irrelevant to the proceeding.[147] The 2014-15 Transmission Plan is clearly relevant. CBD's own witness cites to it multiple times throughout his testimony and CBD even submitted the plan into the record.[148]

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[143] CBD AFR at 30-32.

[144] SCE's initial statement in its Reply to Protests to its Application, "The McGrath peaker was not factored into CAISO's study" is incorrect. Since filing its Reply to Protests, SCE followed up with the CAISO, which conducted the studies which informed the 2012 LTPP Track 1 need determination, and received information confirming that McGrath was indeed modeled in the analysis. CBD asserts that "SCE never withdrew their original representation that the McGrath Peaker was not included" in the CAISO's modeling. CBD AFR at 32. This is incorrect. SCE corrected its misstatement in its Reply Brief in this proceeding, filed on August 5, 2015. *See* SCE's Reply Brief at 30.

[145] SCE, Chinn, Tr., Vol. 2 at 235:26-28 (May 28, 2015); *see also* SCE's Reply Brief at 30.

[146] CBD AFR at 32.

[147] *Id*. at 33.

[148] Exhibit CBD-03; *see also* SCE's Reply Brief at 30.

CBD also fails to understand the applicable reliability standards claiming that the Commission's LCR need determination is in violation of federal standards.[149] The determination of need and the critical contingency used to make that determination were already litigated in D.13-02-015 consistent with federal standards.[150] Furthermore, in addition to federal standards,[151] CAISO has the authority to establish more stringent requirements in alignment with their responsibility to ensure reliability.[152] One of these requirements is CAISO's Local Capacity Requirement which specifically states that for an N-1, system adjusted, followed by an N-2, voltage collapse in an area is not permissible.[153] CBD's failure to comprehend federal reliability standards as well as CAISO's LCR criteria[154] does not serve as grounds to reject the Commission's need authorization. The Commission's LCR need determination and the critical contingency which drove that determination are clearly in alignment with CAISO's LCR criteria and were fully litigated in D.13-02-015.[155] These standards in no way violate the federal North American Electric Reliability Corporation ("NERC") requirements. The conclusion of CAISO's 2014-15 Transmission Plan is relevant to this proceeding, utilizes appropriate planning standards, and clearly demonstrates that SCE's procurement is necessary to maintain reliability within the Moorpark sub-area.

(c) The Commission's Need Determination is Still Valid

CBD claims that changed circumstances have made the Track 1 need determination obsolete and would have the Commission reopen the Track 1 proceeding, and by not doing so the Commission failed to proceed in a manner required by

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149 CBD AFR at 33-34.
150 *See* SCE's Reply Brief at 31.
151 SCE, Chinn, Tr., Vol. 2 at 240:11-26; 241:24-28 (May 28, 2015); *see also* SCE's Reply Brief at 31.
152 Exhibit SCE-7, SCE's Rebuttal Testimony, at 10; *see also* SCE's Reply Brief at 31.
153 SCE, Chinn, Tr., Vol. 2 at 246:3-5 (May 28, 2015); *see also* SCE's Reply Brief at 31.
154 SCE explained the relationship between these two standards to CBD during hearings (SCE, Chinn, Tr., Vol. 2 at 246:2-6 (May 28, 2015)) and subsequently provided CBD with a copy of the CAISO Local Capacity Requirement Study Manual per its request; *see also* SCE's Reply Brief at 31.
155 *See* SCE's Reply Brief at 31.

law.[156] The CAISO 2014-15 Transmission Plan incorporated changed assumptions since the issuance of D.13-02-15.[157] Specifically, CBD highlights changes in the SCE demand forecast and energy storage targets.[158] The Commission, in coordination with the CEC and CAISO, developed the assumptions used in the 2014-15 CAISO TPP ensuring that accurate assumptions were incorporated into the analysis.[159] The 2014-15 CAISO TPP aligns with the Commission's Track 1 need determination and demonstrates that SCE's proposed procurement is necessary.

(d) The Closure of the Ormond Beach Facilities is Certain

CBD argues that the Commission abused its discretion and acted unlawfully by not addressing "[t]he issue of whether or not NRG will actually close the Ormond Beach Power Plant."[160] CBD's claim is baseless and should be rejected. There is no ambiguity with regard to the closure of the Ormond Beach Generating Station ("Ormond"). Pursuant to comments submitted by NRG to the State Water Resources Control Board on the April 2016 Draft Report of the Statewide Advisory Committee on Cooling Water Intake Structures ("Comments") on May 6, 2016 and a letter from NRG to the Commission regarding the retirement of Ormond, dated May 19, 2016, Ormond will *not* operate past December 31, 2020.

In NRG's Comments, NRG stated:

> NRG South [] has decided not to continue to retain a Track 2 compliance option for Ormond Beach. Accordingly, NRG South will discontinue the impingement and entrainment studies. Because completion of the studies is required to utilize Track 2, the decision to discontinue the studies effectively eliminates Track 2 as a compliance option for Ormond Beach. The State Water Board and the

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156 CBD AFR at 34-35.
157 Exhibit SCE-7, SCE's Rebuttal Testimony, at 11; *see also* SCE's Reply Brief at 31.
158 CBD AFR at 36.
159 *See* SCE's Reply Brief at 31.
160 CBD AFR at 36.

> [Statewide Advisory Committee on Cooling Water Intake Structures] should continue to assume that **Ormond Beach will not operate after 2020**.[161]

Just as the Commission determined in the LTPP Track 1 proceeding,[162] the Ormond Beach units will not be in operation past December 31, 2020.

III.

ORAL ARGUMENT IS NOT NECESSARY

CBD requests oral argument for its AFR.[163] However, oral argument will not materially assist the Commission in resolving CBD's AFR. CBD alleges that D.16-05-050 violates the Loading Order, the LTPP Track 1 decision, CEQA, the Public Utilities and Public Resources Code, however, as discussed herein, its claims are unsupported by the law and record evidence. Therefore, D.16-05-050 does not (1) "adopt[] new Commission precedent or depart[] from existing Commission precedent without adequate explanation, (2) "change[] or refine[] existing Commission precedent," (3) present[] legal issues of exceptional controversy, complexity, or public importance," or (4) raise[] questions of first impression that are likely to have significant precedential impact."[164] Because CBD's AFR does not meet any of the foregoing criteria, its request for oral argument should be denied.

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161 *See* Comments of NRG California South LP on the April 2016 Draft Report of the Statewide Advisory Committee on Cooling Water Intake Structures, dated May 6, 2016, at 3 (emphasis added), attached to SCE's Response to California Environmental Justice Alliance's Motion to Set Aside Submission and Reopen Record to Take Additional Evidence.

162 *See* D.13-02-015 at 42, 68.

163 CBD AFR at 37.

164 Rule 16.3(a), Commission's Rules of Practice and Procedure.

IV.

CONCLUSION

For all of the foregoing reasons, SCE respectfully requests that the Commission expeditiously deny the Applications for Rehearing filed by the CBD, CEJA/Sierra Club and Oxnard.

Respectfully submitted,

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